

ORIGINAL

Before the
Federal Communications Commission
Washington, D.C. 20554

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JUN 25 2003

In the Matter of

Amendment of Section 73.606(b),
Table of Allotments, TV Broadcast Stations;
and 73.622(b), Table of Allotments,
Digital Broadcast Television Stations
(Asheville, North Carolina
and Greenville, South Carolina)

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

MM Docket No. 02-363
RM-10604

To: Chief, Television Branch
Video Division
Media Bureau

**SUPPLEMENTAL COMMENTS
OF MEREDITH CORPORATION**

Meredith Corporation ("Meredith"), the licensee of WHNS(TV) and the permittee of WHNS-DT (collectively, "WHNS"), Asheville, North Carolina, hereby submits, in triplicate, these Supplemental Comments on the Media Bureau's *Notice of Proposed Rule Making* ("Notice") in the above-referenced proceeding.

The Notice sought comment on Meredith's Petition for Rule Making to reallocate Channels 21 and 57 from Asheville, North Carolina, to Greenville, South Carolina. Through its Petition for Rule Making, its Comments, and its Reply Comments, Meredith demonstrated that this proposal complied with all relevant Commission rules and policies and that a grant of the proposal would serve the public interest. In the sixteen months since Meredith filed its Petition, and in the nearly seven months since the Bureau released the Notice, no other party has submitted any information opposing, or even addressing, Meredith's proposal. Nevertheless, to ensure that the record before the Bureau is complete, Meredith hereby submits additional information demonstrating that a grant of Meredith's Petition would further the Commission's allotment priorities and would enable WHNS to improve service. Meredith respectfully requests that the Commission expeditiously reallocate WHNS as proposed in the Notice.

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Introduction

The Commission's case law is replete with decisions granting requests to reallocate FM radio stations, and to a far lesser extent television stations, from their initially assigned communities to new communities. As here, a fair number of cases involved no physical relocation of the petitioners' transmission facilities and therefore no change to the petitioners' service areas.¹ In other words, at least some no-transmitter-relocation cases resulted in little more than conforming the applicable Table of Allotments to the petitioners' actual service area. Although few "real world" public interest benefits may have resulted from these decisions, the decisions nonetheless reflect the Commission's 1989 and 1990 policy decisions in MM Docket No. 88-526 to permit broadcasters greater flexibility in specifying new communities of license, subject only to the Commission's allocation priorities and policies.²

Meredith recognizes that its proposal to reallocate WHNS from Asheville, North Carolina, to Greenville, South Carolina, is rather unique in that the instant proceeding, unlike the typical reallocation case, does not involve a proposal to specify a suburban or rural community located near the principal city already served by the petitioner's station.³ Meredith instead proposes to reallocate WHNS to the City of Greenville because it is the City of Greenville, rather than any randomly chosen suburban community, that serves as the social, political, economic, and demographic center of the larger metropolitan area in which WHNS operates.⁴

¹ See, e.g., *Shelby and Dutton, Montana*, 14 FCC Rcd 9514 (MMB 1999); *Freemont and Holton, Michigan*, 14 FCC Rcd 17108 (MMB 1999); *Johnstown and Jeannette, Pennsylvania*, 12 FCC Rcd 10300 (MMB 1997).

² See *Modification of FM and TV Authorizations to Specify a New Community of License*, 4 FCC Rcd 4870 (1989), *recon. granted in part*, 5 FCC Rcd 7094 (1990) ("*Change of Community MO&O*").

³ The cases cited in note 1, for example, reallocated stations, with no transmitter site move, to new "first local service" communities with populations of 392, 2,318, and 11,221, respectively.

⁴ The Greenville metropolitan area is one of four such areas in WHNS's Nielsen Designated Market Area. The others are Asheville, North Carolina; Spartanburg, South Carolina; and Anderson, South Carolina.

Although the Commission's case law includes no case directly analogous to the facts presented here, Meredith's proposal should be granted because it is fully consistent with the Commission's decision in MM Docket No. 88-526 to permit broadcasters the flexibility to specify new community assignments, subject to the compliance with technical requirements and the allocation priorities and policies. As the Commission observed in that proceeding, its action relaxed its reallocation procedures "to remove an unnecessary barrier to the improvement of service by existing licensees and permittees."⁵ As demonstrated previously and as further detailed herein, Meredith's proposal would conform WHNS's community assignment to the television station's actual, "real world" primary service area in a manner that satisfies all Commission requirements and that permits WHNS to improve its service to Greenville. Consequently, Meredith submits that the public interest, convenience, and necessity compels a grant of its Petition.

I. Meredith's Proposal Complies with All Technical Requirements, and It Furthers the Allocation Priorities.

Under long-standing precedent, petitions to specify new communities of license must satisfy both technical requirements and allotment priorities and policies.⁶ The reallocation of WHNS to Greenville would comply with the Commission's technical requirements because no new interference or short-spacings would be created and because WHNS provides the requisite analog and digital signals to Greenville.⁷ In addition, reallocating WHNS to Greenville would result in a preferential arrangement of allotments in accordance with the Commission's allotment priorities and policies.

As the Bureau recognized in its Notice, the Commission has allotted four television stations to Asheville and three television stations to Greenville.⁸ As a result, Meredith's proposal implicates the

⁵ *Change of Community MO&O*, ¶ 2.

⁶ *Id.*, ¶ 11.

⁷ Petition at 7; Notice at 5.

⁸ Notice at 3.

fifth television priority: assign any remaining channels to communities based on population, geographic location, and the number of television services available to the community from stations located in other communities.⁹ In the *Change of Community MO&O*, the Commission emphasized that “the ‘other public interest matters’ category of our FM and TV allotment priorities” would be applied consistent with the Section 307(b) mandate to ensure the fair, equitable, and efficient distribution of radio service.¹⁰

In particular, the Commission held:

Among other factors relevant pursuant to Section 307(b), the Commission considers under these residual categories the location of the proposed allotment with respect to other communities, and the availability of other services in the communities affected by the proposed change. Under these circumstances, it is proper for the Commission to consider whether a proposal would result in shifting of service from an underserved rural to a well-served urban area and the public interest consequences of any such change.¹¹

Under these allotment priorities and policies, the allotment of WHNS to Greenville would result in a preferential arrangement of allotments relative to the existing allotment of WHNS to Asheville. First and foremost, because the reallocation would not require the relocation of WHNS’s transmission facilities, the reallocation would not produce any loss areas or affect the availability or quantity of over-the-air television service to residents of Asheville. In other words, WHNS and all other television stations in the area would serve viewers in Asheville and surrounding communities under the existing allotment scheme and under the proposed allotment scheme.

For these reasons, the reallocation of WHNS does not implicate the Commission’s long-standing concerns about the migration of broadcast stations out of rural areas or otherwise result in the shifting of

⁹ *Sixth Report and Order on Television Allocations*, 41 FCC 148 (1952).

¹⁰ *Change of Community MO&O*, ¶ 12.

¹¹ *Id.*

service from an underserved rural area to a well-served urban area.¹² Indeed, Meredith's proposal actually produces the opposite effect. According to a detailed analysis conducted by Hammet & Edison, 15 full-power television stations deliver Grade B or better signals to Asheville, while just 12 full-power television stations deliver Grade B or better signals to Greenville.¹³ Meredith's proposal, therefore, seeks to reallocate WHNS to a community that receives 20 percent fewer over-the-air television services than WHNS's current community of license. Consequently, the allotment of WHNS to Greenville better discharges the Commission's statutory mandate than the allotment of WHNS to Asheville.¹⁴

Meredith's proposal also furthers the allocation priorities when the current allocation scheme is compared to the proposed allocation scheme in light of population and geographic location. While the city boundaries of Asheville contain a somewhat greater absolute number of residents than the city boundaries of Greenville, the 2000 U.S. Census reveals that the cities' demographics differ markedly. Asheville, for example, has a relatively older and wealthier population than Greenville (as noted below). Asheville also has a less ethnically diverse population, with 55 percent *more* white residents and 36 percent *fewer* African-American residents than Greenville.

¹² *Savannah, Springfield and Tybee Island, Georgia*, 18 FCC Rcd 10388, ¶ 3 (MB 2003) (reallotment with no change of transmitter site or change in level of coverage of urbanized area did not implicate migration concerns); *Memphis, Tennessee, Olive Branch and Horn Lake, Mississippi*, 17 FCC Rcd 2465, ¶ 3 (MMB 2002) ("since [the station] is licensed to Memphis and does not intend to move its transmitter site, coverage of the Memphis Urbanized Area will not change. . . . [T]he requested reallotments do not constitute a migration to an urbanized area since both stations currently provide over 50 percent coverage to an urbanized area and will continue to do so. . . ."); *Noblesville, Indianapolis, and Fishers, Indiana*, 16 FCC Rcd 13072, ¶ 5 (MMB 2001) ("We note that because the reallotment . . . involves no site change and [the station] will be providing the same amount of coverage to the Indianapolis Urbanized Area, the Commission does not require [a *Tuck*] analysis of the community of Noblesville because that aspect of this proposal does not constitute a migration to an urbanized area warranting application of this policy")(footnote omitted).

¹³ See Attachment A.

¹⁴ See *Change of Community MO&O*, ¶ 12 (fifth television allocation priority involves a comparison of "the availability of other services in the communities affected by the proposed change").

In this case, a simple comparison of the populations within the artificial political boundaries of the cities of Asheville and Greenville merely begins, rather than ends, the Bureau's analysis under the fifth allotment priority. Recognizing that "television stations – unlike FM broadcast stations – are generally considered as providing 'an areawide, rather than a localized service,'" ¹⁵ the Commission has held that "the television service area for Section 307(b) purposes 'should be defined in terms of coverage and not in terms of artificial political boundaries.'" ¹⁶ In the *Change of Community MO&O*, the Commission explained, "We have generally been willing to apply the television priorities in a more liberal fashion than the FM priorities due to the recognition that television is a more regional service" ¹⁷

Consequently, the populations of Asheville and Greenville should also be compared on the county level and the Metropolitan Service Area level. These comparisons actually reverse the relative population advantage found on the city level. In particular, according to the most recent data available, Greenville County has nearly *twice* as many residents as Buncombe County (379,616 versus 206,330), and the Greenville MSA has about *four times* the population of the Asheville MSA (925,400 versus 214,300). ¹⁸ County-level comparisons reinforce the demographic disparities between the Asheville area and the Greenville area. Specifically, Greenville County is more ethnically diverse than Buncombe County (18.3 percent African-American versus 7.5 percent; 77.5 percent white versus 89.1 percent). In

¹⁵ *Cleveland Television Corp.*, 91 FCC 2d 1129 (Rev. Bd. 1982), *aff'd*, 732 F.2d 962 (D.C. Cir. 1984), quoting *St. Louis Telecast, Inc.*, 22 FCC 625, ¶ 14 (FCC 1957).

¹⁶ *Id.*, quoting *Evening Star Broadcasting Co.*, 27 FCC 2d 316, 321 n. 4 (1971), *aff'd sub nom. Stone v. FCC*, 466 F. 2d 316 (D.C. Cir. 1972).

¹⁷ *Change of Community MO&O* n. 8, citing, *Cleveland Television Corp.*, 91 FCC 2d 1129 (Rev. Bd. 1982), *aff'd*, 732 F.2d 962 (D.C. Cir. 1984).

¹⁸ County populations are derived from 2000 U.S. Census. MSA populations are 1999 estimates from Rand-McNally's 2000 Commercial Atlas & Marketing Guide at 105, 106.

addition, Greenville County has a smaller percentage of senior citizens (11.7 percent versus 15.4 percent) and a lower median age than Buncombe County (35.5 years versus 38.9).

Furthermore, a comparison of the geographic locations at issue, as the Bureau recognized in its Notice, reveals even greater disparities between the level of economic activity in the Asheville area and the level of economic activity in the Greenville area.¹⁹ In fact, Meredith previously demonstrated that Greenville, quite simply, is the economic center of the entire Greenville-Asheville-Spartanburg-Anderson television market.²⁰

Comparisons of the relative populations and geographic locations, therefore, support the allotment of WHNS to Greenville over Asheville. The current allocation scheme provides for four television stations in Asheville, but only three television stations in the market's central city. In light of the fact that more individuals live and work in and around Greenville than the Asheville area, and in light of the 20 percent deficiency in television services received in Greenville relative to Asheville, the Bureau should rebalance the relative television allotments to allot an additional television service to Greenville. Meredith's proposal permits the Bureau to further these allocation priorities without compromising its technical requirements or jeopardizing the level of service enjoyed by viewers today. Consequently, a grant of Meredith's Petition would comply with all Commission requirements and further the Commission's allotment priorities and policies.

II. Reallocating WHNS to Greenville Would Permit WHNS to Improve Its Service to the Local Community.

The Commission, in MM Docket No. 88-526, removed a significant obstacle to community reallocations to permit broadcasters to improve the service they provide local listeners and viewers.²¹ While the service improvements that may result from reallocation of WHNS to Greenville would not be

¹⁹ See Notice, ¶ 4.

²⁰ Petition at 4-5.

²¹ See generally, *Change of Community MO&O*, ¶ 2.

technical (because the transmission facilities would not change), they nonetheless would further the public interest.

The record demonstrates that reallocation of WHNS to Greenville would conform the FCC's Television Table of Allotments with the experiences of viewers, community groups, trade associations, local commercial and political advertisers, and governmental entities who substantially interact with WHNS.²² The television station has long maintained its studio and offices in Greenville, and it has long been involved with civic, community, and trade associations in the Greenville area. The vast majority of the television market's television households, and the vast majority of WHNS's viewership, are located in South Carolina. For these reasons, neither businesses located in North Carolina nor candidates for political office in North Carolina choose to advertise on WHNS. Moreover, every non-federal governmental entity regulating WHNS subjects the television station to the civil, criminal, business, employment, environmental, and tax laws of South Carolina – not North Carolina.

Reallocating WHNS to Greenville would not simply extinguish an inconsequential, artificial designation in the Commission's records. To the contrary, reallocation facilitates an improvement of WHNS's outreach and service to the South Carolinians who constitute the vast majority of its viewers. Reallocating WHNS to Greenville would eliminate the risk of an inaccurate impression that the primary service area and historical focus of "WHNS, Asheville, North Carolina" is anything other than Greenville. Such an impression hinders WHNS's public interactions by creating an obstacle that must be overcome each time the television station first approaches a new person, group, or organization laboring under this misimpression. Thus, whether WHNS is recruiting for an open employment position at a job fair or whether its reporter is soliciting a South Carolina government official to appear on its newscast, WHNS faces the risk that the individual approached will dismiss WHNS's efforts under the mistaken belief that WHNS is located in and serves a distant community in a different state. While

²² See Notice at 5-6; Petition at 5-6; Comments at 3-4.

WHNS generally has been successful in demonstrating its long-standing commitment to Greenville, it simply has no way to know how many potential recruits, potential newscast interviews, and other opportunities have been lost due to its Asheville moniker.

If WHNS could identify officially with Greenville on-air and in all other media, WHNS should be able to increase the effectiveness of its interaction with viewers, recruits, news makers, local community groups, and local advertisers. To the extent WHNS improves its ability to interact in this manner, WHNS will become a stronger competitor in the local markets for news, employees, and clients, and therefore a more attractive employer in the eyes of the Greenville work force, especially those individuals who are unwilling or unable to commute to a job sixty miles away in Asheville. Because Greenville city, county, and MSA each have more minorities in absolute and relative terms than Asheville city, Buncombe County, and the Asheville MSA, any increase in WHNS's attractiveness as a Greenville employer should facilitate its ability to attract more qualified minority applicants through its on-going outreach efforts.

Reallotment of WHNS to Greenville would further serve the public interest by increasing Meredith's obligations under the FCC's equal employment opportunity rules. As a television station licensed to a community located within the Asheville MSA, WHNS is subject only to the EEO obligations imposed on "small market stations."²³ In contrast, if WHNS is instead licensed to Greenville, WHNS would be subject to the EEO obligations imposed on "large market stations." In practical terms, the change in WHNS's community allotment would double the amount of WHNS's minimum biennial outreach obligations under the FCC's EEO rules, even though WHNS would not be

²³ A station employment unit is considered to be located in a smaller market if the unit consists solely of stations "licensed to a community that is located in a county that is outside of all metropolitan areas, as defined by [the Office of Management and Budget], or is located in a metropolitan area that has a population of fewer than 250,000 persons." 47 C.F.R. § 73.2080(c)(2), (e)(3), *Broadcast and Cable Equal Employment Opportunity Rules and Policies, Second Report and Order and Third Notice of Proposed Rule Making*, 17 FCC Rcd 24018, ¶¶ 113, 169-170 (FCC 2002).

changing its transmitter site, studio location, or number of employees. WHNS would remain subject to these increased EEO obligations, of course, even if the station hereafter is acquired by a broadcaster who lacks Meredith's commitment to equal employment opportunities.

Finally, reallocation of WHNS would permit WHNS to improve the service it provides to its primarily South Carolinian audience by enabling the State of South Carolina to communicate with its citizens more freely. At this time, 18 U.S.C. Section 1304 prevents WHNS from honoring the State of South Carolina's recent requests to promote The South Carolina Educational Lottery solely because the viewers in the state's largest television market who watch popular Fox network and syndicated and local programming on WHNS happen to be watching broadcasts from a television station that the Commission has licensed to Asheville, which is located in one of the few states that does not have its own lottery. In other words, the State of South Carolina is categorically prevented from communicating directly with its own citizens about a lottery system that is owned by and benefits those citizens due solely to the Commission's allotment of WHNS to Asheville. This is despite the facts that:

- two-thirds of the households in the DMA are located in South Carolina;
- most of WHNS's viewers reside in South Carolina;
- WHNS is regulated in every respect by the State of South Carolina; and
- every other commercial enterprise and political candidate in South Carolina may advertise on WHNS.

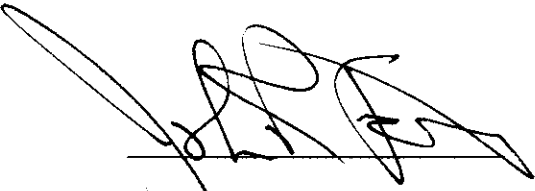
The inability of The South Carolina Educational Lottery to promote itself to the attractive demographics offered by WHNS inhibits WHNS from serving its local community in the same manner as other television stations who primarily serve South Carolina, and it handicaps the state in its efforts to increase its funding of education for South Carolina residents – many of whom are avid viewers of WHNS. Consequently, there can be no question that the reallocation of WHNS to Greenville will enable WHNS to improve its service to the State of South Carolina and its citizens.

Conclusion

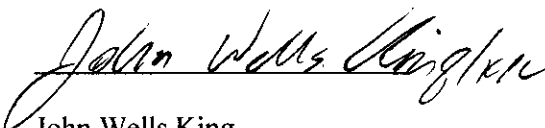
The record before the Bureau clearly demonstrates that the allotment of WHNS to Greenville is preferred over the allotment of WHNS to Asheville under the Commission's allotment priorities and policies. Grant of the allotment will undeniably serve the public interest, while maintenance of the status quo is not in the public interest. Accordingly, Meredith respectfully requests that the Bureau act expeditiously to grant its Petition.

Respectfully submitted,

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June 25, 2003

June²⁵, 2003

Station WHNS • Channel N21 • Asheville, North Carolina

Statement of Hammett & Edison, Inc., Consulting Engineers

The firm of Hammett & Edison, Inc., Consulting Engineers, has been retained by Meredith Corporation, licensee of TV Station WHNS, NTSC Channel 21, Asheville, North Carolina, to determine the number of full-service Grade B television signals serving all or any portion of Asheville, and the number of full-service Grade B television signals serving all or any portion of Greenville, South Carolina.

Number of Grade B Signals for Asheville, North Carolina

As shown by the attached Figure 1, there are a total of fifteen Grade B TV signals serving all, or any portion of, Asheville, North Carolina. This count includes TV Station WHNS.

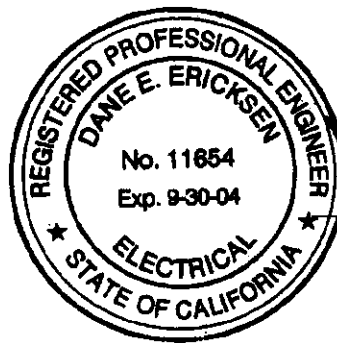
Number of Grade B Signals for Greenville, South Carolina

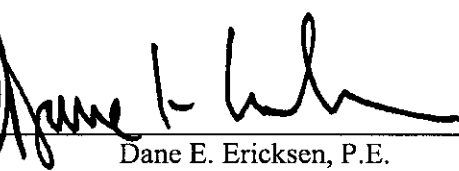
As shown by the attached Figure 2, there are a total of twelve Grade B TV signals serving all, or any portion of, Greenville, South Carolina. This count includes TV Station WHNS.

List of Figures

In carrying out these engineering studies, the following attached figures were prepared under my direct supervision:

1. Map showing number of Grade B signals for Asheville, North Carolina
2. Map showing number of Grade B signals for Greenville, South Carolina.




Dane E. Ericksen, P.E.

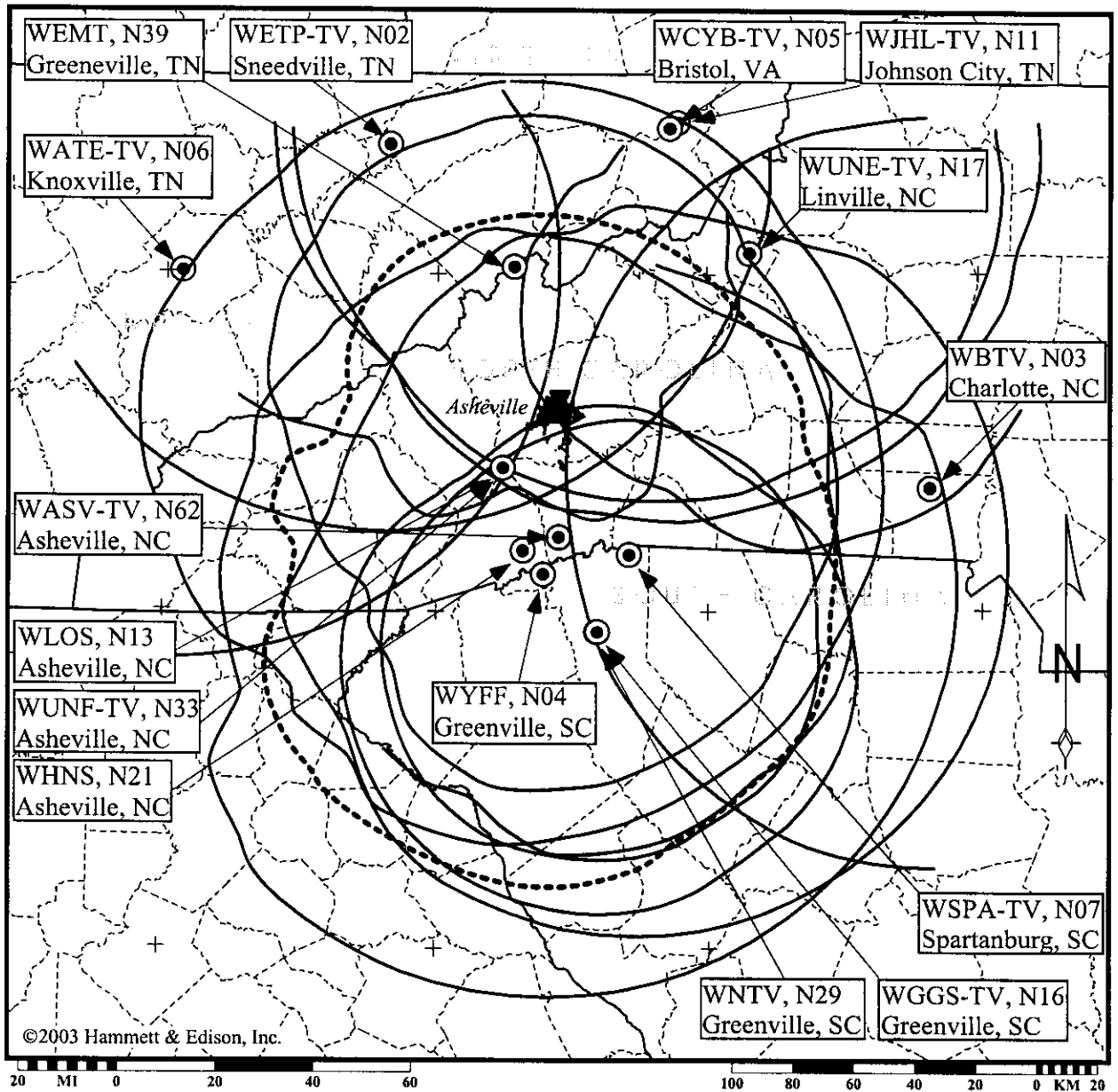
June 18, 2003



HAMMETT & EDISON, INC.
CONSULTING ENGINEERS
SAN FRANCISCO

Station WHNS • Channel N21 • Asheville, North Carolina

Grade B TV Signals Serving all or a Portion of Asheville, North Carolina



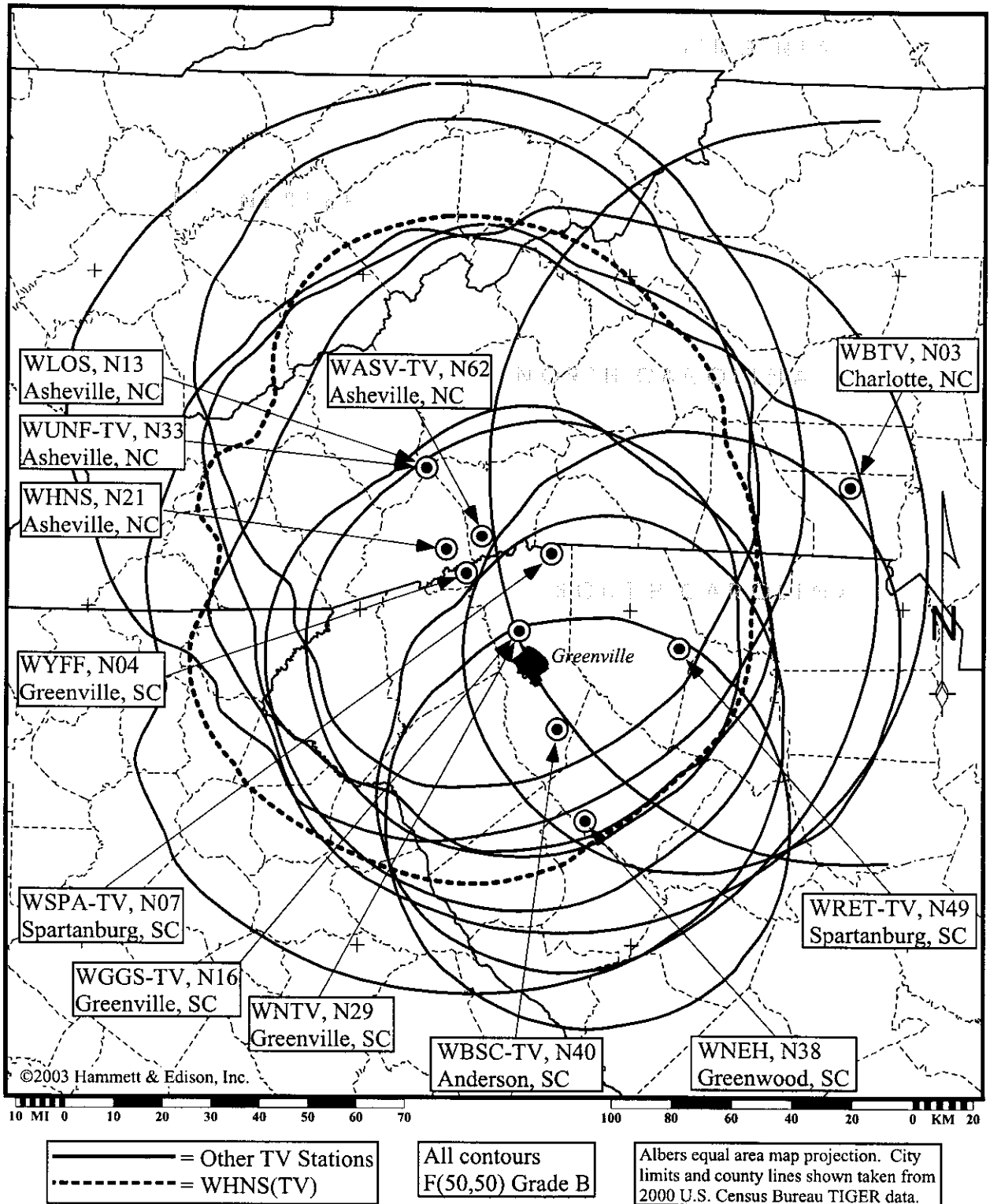
— = Other TV Stations
 - - - = WHNS(TV)

All contours
 F(50,50) Grade B

Albers equal area map projection. City limits and county lines shown taken from 2000 U.S. Census Bureau TIGER data.

Station WHNS • Channel N21 • Asheville, North Carolina

Grade B TV Signals
Serving all or a Portion of Greenville, South Carolina



HAMMETT & EDISON, INC.
CONSULTING ENGINEERS
SAN FRANCISCO

030617
Figure 2